THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

–

W.P.No.1538 of 1998

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Between
Ashok ..Petitioner

AND

The Depot Manager, APSRTC, Medak District and others ..Respondents

JUDGMENT

12.3.2007

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.1538 of 1998

ORDER:

The writ petitioner is an erring Driver of A.P.S.R.T.C. said to have caused an accident on 15.9.1983 causing injuries to another road user.

Examining the misconduct arising out of such act on the part of the writ petitioner, the A.P.S.R.T.C., the employer appears to have imposed a punishment upon finding him guilty of misconduct. Calling in question the correctness of the imposition of such a punishment, the writ petitioner has instituted I.D.No.29 of 1995 invoking Section 2-A (2) of the Industrial Disputes Act. The Labour Court has held the petition as not maintainable and hence dismissed the petition with costs of Rs.500/-. Calling in question on the correctness of this Award passed by the Labour Court, the present writ petition has been instituted.

Section 2-A has been incorporated into the Industrial Disputes Act, 1947 through an Act 32 of 1987 of the State Legislature. It reads as under:

> 2.A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute:--
>
> (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the

services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) "Notwithstanding anything in section 10, any such workman as is specified in sub section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application, the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act; and accordingly all the provisions of this Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute.

By this amendment, it is now decided that wherever and whenever any employer discharges or dismisses or retrenches or otherwise terminates the services of a workman, the said act on the part of the employer to be treated as an Industrial Dispute by itself and the aggrieved workman in such a scenario has been granted the liberty to straight away make an application for adjudication of the dispute to the Labour Court concerned.

The punishment of stoppage of increments with cumulative effect imposed upon the writ petitioner by the employer APSRTC in the instant case is not one which can fall, by any stretch of reasonable imagination, either in the category of discharge or dismissal or retrenchment or would it amount to brining about termination of the relationship of master and

servant, for one to deem or consider it as an Industrial Dispute and on that basis, to move an application directly to the Labour Court concerned under Clause (2) of
Section 2-A of the Industrial Disputes Act. This is precisely what the Labour Court had pointed out and for the abuse of the process of the Court, the Labour Court has thought it proper to impose costs of Rs.500/-. The undaunted writ petitioner persisted and pursued with the present writ petition.

Sri J.M.Naidu, learned counsel for the petitioner made a strenuous effort to satisfy me that the case of the writ petitioner falls within the four corners of the ambit provided under Section 2-A of the Industrial Disputes Act for the *lis* to be treated as an Industrial Dispute. Since, I am not in a position to comprehend that the punishment of stoppage of increments with or without cumulative effect would amount to discharge from employment or dismissal from service or even retrenchment or in any other manner it brings about a cessation of relationship of master and servant, the issue therefore does not fall within the four corners of the ambit provided under Section 2-A of the Industrial Disputes Act. Only in such cases covered by Section 2-A of the Industrial Disputes Act, the liberty has been accorded to approach the Labour Court to the aggrieved workman. In all other cases, the workman will have to fall back upon the mechanism provided for in the Industrial Disputes Act.

For the sheer failure to show restraint and consideration before indulging in litigation, the writ petitioner deserves to be imposed with exemplary costs. But however, taking into account and consideration the fact that he is a Driver, I consider it appropriate to impose costs of Rs.1,000/- and grant

liberty to the respondent- A.P.S.R.T.C. to recover the same from the salary and allowances in case the writ petitioner is still serving the Corporation and in case he is not serving presently in the Corporation, from any other financial benefits to which he is entitled to be conferred. In the absence thereof, it is open to the Corporation to recover the costs of Rs.1,000/- imposed now in accordance with law.

With this, the writ petition stands dismissed with costs as indicated above.

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NOOTY RAMAMOHAN RAO.J.

12.3.2007
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